



## STAFF REPORT ACTION REQUIRED

### Acquisition of Fee Simple Interest Over Railway Lands for Pedestrian Bridge

<b>Date:</b>	November 24, 2009
<b>To:</b>	City Council
<b>From:</b>	Chief Corporate Officer and General Manager, Transportation Services
<b>Wards:</b>	20 – Trinity-Spadina
<b>Reference Number:</b>	P:\2009\Internal Services\F&re\Cc09109F&re – (AFS 10948)

#### SUMMARY

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The purpose of this report is to seek City Council’s approval for the City to enter into an agreement with the Canadian National Railway Company (“CN”) and The Toronto Terminals Railway Company Limited (“TTR”) to acquire a fee simple interest in the air rights over the lands on the south side of Front Street West, between Spadina Avenue and Bathurst Street, for the purpose of building a pedestrian bridge to connect Portland Street with Dan Leckie Way, and to request a budget adjustment to the 2010 recommended capital budget for Transportation Services in order to fund the purchase.

#### RECOMMENDATIONS

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**The Chief Corporate Officer and General Manager, Transportation Services recommend that:**

1. City Council grant authority for the City to enter into an Agreement of Purchase and Sale (the “Agreement”) with CN and TTR for the purchase of a fee simple interest in the air rights, commencing at 8.2 metres above grade, over the lands on the south side of Front Street West, between Spadina Avenue and Bathurst Street, located approximately 47 metres from the east side of Portland Street and approximately 42 metres from the west side of Draper Street (the “Air Rights”), at a purchase price of \$500,000.00 plus applicable taxes and registration fees, substantially on the terms and conditions outlined in Appendix “A” to this report and on such other terms and conditions as may be acceptable to the Chief Corporate Officer and in a form satisfactory to the City Solicitor.

2. City Council direct that a project, “Pedestrian Bridge Air Rights Acquisition”, be added to the 2010 Recommended Capital Budget for Transportation Services and the necessary funding of \$512,500.00 be provided from the Land Acquisition Reserve Fund (XR1012).
3. City Council direct that the funding of \$512,500.00 provided from the Land Acquisition Reserve Fund (XR1012) be repaid through funds that will be received by approximately December, 2010 from the following agreements, which include funds set aside specifically for the construction of the pedestrian bridge: Section 16 agreement for 16 York Street for the amount of \$500,000.00, and Section 37 agreement for the Railway Lands West for the balance of applicable taxes and charges estimated at \$12,500.00.
4. City Council forward this report to the Executive Committee for consideration with the 2010 Recommended Capital Budget for Transportation Services.
5. City Council authorize severally each of the Chief Corporate Officer and the Director of Real Estate Services to execute, on behalf of the City, the Agreement with CN and TTR.
6. City Council authorize the City Solicitor to complete the transaction(s) on behalf of the City, including paying any necessary expenses, amending the closing, due diligence and other dates, and amending and waiving terms and conditions, on such terms as she considers reasonable.
7. City Council authorize and direct the appropriate City Officials to take the necessary action to give effect to these recommendations.

### **Financial Impact**

The total cost of this acquisition is approximately \$512,500.00, including all taxes and charges. No funding provision has been made within the City’s Capital Budget.

Funding in the same amount is available in the Land Acquisition Reserve Fund (XR1012). It is therefore recommended that the 2010 Recommended Capital Budget for Transportation Services be increased by \$512,500.00, with offsetting funds in the same amount from the Land Acquisition Reserve Fund. The Land Acquisition Reserve Fund will be replenished with the funding in the same amount once funds from Section 16 agreement for 16 York Street and Section 37 agreement for the Railway Lands West are received. The anticipated time line for receipt of those funds is December 2010.

A break down of the contemplated costs for the Air Rights can be found below:

<b>Payment to CN and TTR:</b>	Purchase price (less GST)	\$500,000.00
	<b>Total Payment to CN</b>	<b>\$500,000.00</b>
<b>City's Closing Costs:</b>	Land Transfer Taxes – app.	\$12,200.00
	Registration Costs –app.	\$100.00
	Other Estimated Costs –app.	\$200.00
<b>Net Cost to City less GST</b>		<b>\$512,500.00</b>

GST on Purchase Price of the Air Rights is approximately \$25,000.00.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

City Council, at its special meeting held on April 6, 2009, adopted TE 24.49 of the Toronto and East York Community Council, approving the location of the pedestrian bridge, including its height above the railway corridor, the location of the access ramps, and the location of the support pier within the railway corridor. City Council also authorized City staff to negotiate and enter into agreements with CN, GO Transit, TTR and Concord Developments Corp. and Cityplace Developments Corp. (“Concord Adex”), as required, for the construction, maintenance and use of the pedestrian bridge crossing and permits for the bridge crossing.

## **ISSUE BACKGROUND**

Concord Adex, as part of their subdivision agreement with the City, is obligated to design and build a pedestrian bridge over the rail corridor on the south side of Front Street West, between Spadina Avenue and Bathurst Street entirely at its own cost. Once the bridge is built it will be conveyed to the City, and the City will be responsible for ongoing maintenance and upkeep. However, it is first necessary for the City to acquire from CN and TTR the Air Rights through which the bridge will be constructed and maintained.

CN has conveyed the ownership of the rail tracks to GO Transit, however as part of that transaction it has retained the potential development rights for space higher than 8.2 metres above the rails. Since the bridge will be located within this airspace, which has been retained by the railways for development purposes and not for rail use, it is CN and TTR’s position that the bridge falls outside of the normal railway/road crossing regime under the *Canadian Transportation Act*. As such, CN believes that the value of the development potential for the airspace required for the construction of the pedestrian bridge is approximately \$500,000.00. Concord Adex is anxious to fulfill their obligation and begin construction of the pedestrian bridge, and has advised that if the City has not acquired the Air Rights by February, 2010, it will request the Ontario Municipal Board to relieve it from the obligation to construct the pedestrian bridge.

Staff was originally negotiating the acquisition of the Air Rights from CN, who also acts on behalf of TTR, in exchange for properties owned by the City which have been

determined to be mainly road allowances and located on railway corridors. The City's disposal process for public highways requires Transportation Services to declare the highways surplus and for staff to obtain Council's authority to close the public highways, to enact a By-law for the closures, and to offer the closed highways for sale. This process would require a minimum of two City Council meetings to complete and the resulting transactions would not be completed until after February of 2010.

## **COMMENTS**

The air space over the rail corridor, located on the south side of Front Street West, between Spadina Avenue and Bathurst Street, is required for the purpose of constructing a pedestrian bridge to connect Portland Street with Dan Leckie Way. Negotiations between the City and CN have resulted in an agreement that the value of the air rights is \$500,000.00. Additional details of the terms and conditions of purchase are set out in Appendix "A" of this report. A budget adjustment to the 2010 recommended capital budget for Transportation Services is required in order to fund the purchase.

The requirement to secure the Air Rights for Concord Adex to build the pedestrian bridge is required to be completed by February 2010 in order to avoid a potential application by Concord Adex requesting the Ontario Municipal Board to relieve it from the obligation to construct the pedestrian bridge. The City and CN will continue to explore the possibility of conveying to CN the properties that it has expressed interest in acquiring. Any contemplated sale transaction would be the subject matter of a future report.

The construction of the pedestrian bridge is in the best interest of the City as it will provide a north-south connection for Portland Street and Dan Leckie Way. Staff considers the Agreement outlined in Appendix "A" to this report to be fair and reasonable and therefore, recommends the approval of this transaction.

## **CONTACT**

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## **SIGNATURE**

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Bruce Bowes, P. Eng.  
Chief Corporate Officer

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Gary Welsh  
General Manager, Transportation Services

## **ATTACHMENTS**

Appendix A – Terms and Conditions  
Appendix B – Location Map